IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1793 OF 2004
IN
SUIT NO.2135 OF 2001

Sandeep G. Raheja. ..Plaintiff.

V/s.

Chandru L.Raheja & Ors. ..Defendants.

Mr.P.C.Mody i/b K.D.Abhichandani for applicant/-plaintiff.

Mr.Amit Damle i/b A.I.Agrawal for defendant No.2.

Ms.Rohini Shelke i/b Humranwala & Co. for defendant No.4.

Mr. H.N.Thakore i/b Thakore Jariwala & Associates for defendant No.9.

Mr.Chirag Balsara i/b. N.Himaytullah for defendant No.8.

Mr.Jayesh Vyas i/b Bilawala & Co. for defendant No.7.

Mr.Shyam Diwan i/b Wadia Gandy & Co. for defendant No.1.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 19, 2005.

P.C. :

1. Heard counsel for the parties. This application is for amendment of the plaint. This application is resisted by defendant no.1, 8 and 9 respectively. According to them, plaintiff took out chamber summons No.1008 of 2004, whereby defendant No.9 has been impleaded as party respondent. The

ground which is now stated for granting proposed amendment was available to the plaintiff and has failed to take that ground on the earlier occasion. This application is nothing but abuse of process of court.

2. Having considered rival submissions, in my opinion, plaintiff is entitled to the relief claimed in this application. This is so because, earlier amendment was limited to the assertions made that defendant No.1 fraudulently mortgaged the property in favour of the defendant No.9 for the loan taken by defendant No.1. In that context amendment was allowed. Whereas in the present application, the case made out for the proposed amendment is that defendant No.9 has purchased property from defendant no.8 which transaction is fraudulent and not bonafide. This fact has come to the notice of the plaintiff from the averments made in the affidavit filed by the parties in the proceedings before Company Law Board. To get over this position, Counsel for the defendants submit that affidavits were filed before Company law Board on 7th August, 2004 and the same was disposed of only on 29th October, 2004. Accordingly, contends learned counsel that the plaintiffs were obliged to bring that

position on record during pendency of the earlier chamber summons No.1008/2004. Indeed, the plaintiff could have taken recourse to amendment of the earlier Chamber summons or withdrawn the same with liberty to file a comprehensive application for amendment, but that does not mean that plaintiff is not entitled to take out present chamber summons for the facts which have come to the notice of the plaintiff after institution of the earlier chamber summons No.1008 of 2004. Viewed in this perspective even if that chamber summons was disposed of at the later stage on 29th October, 2004 that will make no difference. This is so because the assertion made in the present application, proposed amendment is obviously subsequent event, which have come to the knowledge of the plaintiff from the affidavit filed by the parties in the proceedings before the Company Law Board. Viewed in this perspective, chamber summons ought to succeed.

3. In the circumstances, chamber summons is made absolute in terms of prayer clause (a). Amendment to be carried out within 6 weeks from today.

4. It will be open for the defendant to file further written statement in view of the proposed

amendment allowed in the present chamber summons.

5. It is clarified that all questions on merits are kept open.